

United States
Circuit Court of Appeals
For the Ninth Circuit. 8

PETER SEKINOFF,

Appellant,

vs.

N. P. SEVERIN COMPANY, a Partnership of
Which N. P. SEVERIN and A. N. SEV-
ERIN are Members,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
Territory of Alaska, Division Number One.

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

HELLENTHAL & HELLENTHAL, Juneau,
Alaska,
Attorneys for Appellant.

H. L. FAULKNER, Esq., Juneau, Alaska,
Attorney for Appellee.

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 3064-A.

PETER SEKINOFF,

Plaintiff,

vs.

N. P. SEVERIN CO., a Partnership of Which
A. N. SEVERIN and N. P. SEVERIN are
Members,

Defendant.

COMPLAINT.

Comes now the plaintiff and for cause of action,
complains and alleges:

I.

That the defendant is now and at all the times
hereinafter mentioned was a partnership, of which
A. N. Severin and N. P. Severin are members, duly
organized and existing and engaged in the con-
struction of a public building in Juneau, in the

Territory of Alaska; and that said defendant does now and at all of said times did, employ more than five employees in connection with said construction work.

II.

That on or about the 14th day of January, 1930, the plaintiff, who was on said date, for some time prior thereto had been, an employee of and employed by the defendant as a common laborer in its said construction business, while he was so employed by the said defendant in shoveling dirt in and about its construction work in the City of Juneau, Alaska, accidentally received personal injuries, which injuries arose out of and in the course of his said employment by and with said defendant. The said plaintiff, while shoveling dirt as aforesaid, was hit with some foreign substance in his left eye, the actual substance being unknown to this plaintiff, which injuries so received by the plaintiff are permanent and has resulted in the total loss of sight in his left eye the exact reason for such loss of eyesight the plaintiff does not know, and the strain and injury to the left eye has injured plaintiff's right eye, by causing irritation and strain in said right eye which said injuries have destroyed fifty (50%) [1*] per cent of plaintiffs' earning capacity and the plaintiff is now able to earn only fifty (50%) per cent of what he could earn before the injury.

III.

That prior to the time that said plaintiff re-

*Page-number appearing at the foot of page of original certified Transcript of Record.

ceived said personal injuries, neither the plaintiff nor the defendant had given notice of his or its election to reject the provisions of Chapter 98, Alaska Session Laws 1929, approved April 16, 1929, known as "The Workmen's Compensation Act of Alaska," and entitled

"An Act Relating to the measure and recovery of compensation of injured employees in all business, occupations, work, employments, and industries employing five or more employees in the Territory of Alaska, except domestic service, agriculture, dairying and the operation of railroads as common carriers, and relating to the compensation to designated beneficiaries where such injuries result in death, defining and regulating the liability of employers to their employees in connection with such business and industries and repealing Chapter 71, Session Laws of Alaska, 1915, Chapter 98, Session Laws of Alaska, 1923, Chapter 63, Session Laws of Alaska, 1925 and Chapter 77, Session Laws of Alaska, 1927 all relating to the same subject and repealing all Acts and parts of Acts in conflict with this act, and declaring an emergency."

IV.

That the said plaintiff at the time of his injury above set forth was unmarried and had nobody dependent upon him for support.

V.

That Two Hundred Fifty (\$250.00) Dollars is

reasonable attorney's fees for bringing and prosecuting this action.

WHEREFORE, plaintiff prays judgment against the defendant for the sum of Two Thousand Seven Hundred (\$2,700.00) Dollars, together with Two Hundred Fifty (\$250.00) Dollars attorney's fees and his costs and disbursements herein incurred.

HELLENTHAL & HELLENTHAL,

Attorneys for Plaintiff,

Address: Over First National Bank, Juneau,
Alaska.

United States of America,
Territory of Alaska,—ss.

Peter Sekinoff, being first duly sworn on oath deposes and says; that he is the plaintiff in the foregoing action, that he has read the foregoing complaint, knows the contents thereof and that the same is true as he verily believes. [2]

PETE SEKINOFF.

Subscribed and sworn to before me this 16th day of May, 1930.

[Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My com. expires 1/22/34.

Filed May 16, 1930. [3]

[Title of Court and Cause.]

ANSWER.

Comes now the defendant, N. P. Severin Com-

pany, and answering plaintiff's complaint, admits, denies and alleges as follows:

I.

Defendant admits the allegations contained in Paragraph I, except that defendant is a corporation, which allegation the defendant denies; and alleges that it is a copartnership, consisting of N. P. Severin and A. N. Severin.

II.

Referring to Paragraph II, defendant admits that on or about January 14, 1930 plaintiff was in defendant's employ; admits that he was in such employ for a short time prior thereto; denies that he accidentally received any personal injuries arising out of and in course of his said employment by defendant; and denies each and every other allegation contained in said paragraph.

III.

Defendant admits the allegations contained in Paragraph III.

IV.

Defendant admits that plaintiff is unmarried and has no dependents, and admits that he was unmarried and had no dependents at the time he was in the employ of said defendant, as alleged in Paragraph IV. [4]

V.

The defendant denies the allegation contained in Paragraph V.

WHEREFORE, defendant prays that this action be dismissed and that it recover its costs and disbursements herein from the plaintiff.

H. L. FAULKNER,
Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

I, R. M. Curtis, being first duly sworn, depose and say:

That I am agent and superintendent of N. P. Severin Company, a copartnership, the defendant, and make this verification on its behalf. That I have read the foregoing answer and know its contents, and that the facts stated therein are true and correct as I verily believe.

R. M. CURTIS.

Subscribed and sworn to before me this 11th day of June, 1930.

[Seal]

H. L. FAULKNER,
Notary Public for Alaska.

My commission expires Aug. 2, 1932.

Copy received June 11, 1930.

HELLENTHAL & HELLENTHAL,
Attys. for Plaintiff.

Filed Jun. 12, 1930. [5]

Filed Mar. 23, 1931.

[Title of Court and Cause.]

STATEMENT OF FACTS.

BE IT REMEMBERED, that on this 11th day of February, 1931, at the hour of 10 o'clock A. M. the above-entitled case came on for trial in the above-entitled court before a jury, the Honorable Justin W. Harding, District Judge, presiding; the plaintiff appearing in person and by S. Hellenthal, Esq., of Hellenthal & Hellenthal, and by George B. Grigsby, Esq., his attorneys; the defendant appearing by H. L. Faulkner, Esq., its attorney.

Both sides being ready for trial, the following occurred:

THEREUPON a jury was duly empaneled and sworn to try the case. Counsel for both parties made their opening statements to the jury; and thereafter the following proceedings were had and done, to wit: [6]

The plaintiff, to sustain the issues, offered the following sworn testimony:

TESTIMONY OF LOUIS DELEBECQUE, FOR PLAINTIFF.

LOUIS DELEBECQUE testifies that he is the timekeeper for the N. P. Severin Company, and he has the *the* time-books for the week ending January 16, 1930; that he is not certain as to whether the name of Peter Sekinoff appears on the December time-cards, that he would have to look it up, Mr.

(Testimony of Louis Delebecque.)

Faulkner admitted that it does; Mr. Faulkner has the time-card for January 16, 1930, the time-book for that week; that the name of the plaintiff appears on the time-book; that it shows that he worked for the defendant company on the tenth, eleventh, twelfth, thirteenth, and fourteenth, as shown by the time-book; that he worked eight hours on the fourteenth which is a full day; that he worked a full day on all of those days and that was the last day he worked in January. [7]

TESTIMONY OF PETE SEKINOFF, FOR PLAINTIFF.

PETE SEKINOFF testifies that he worked for the N. P. Severin Company in 1930, January 10th to 15th and also in December, 1929; that he is uncertain of the number of days he worked in January; that he worked with a pick and shovel; that he made an eight-foot fill, one eight by ten, and one man to each hole; that he dug a hole in front, while digging he struck a rock which bounced up and hit him in the eye, that the rock was about two or three inches in diameter; that the shifter, Carney by name, was behind him and helped him clean the dirt out of his eye, and the shifter informed him that it was all right then; that he worked a day or two more and then asked the shifter if he could see a doctor, the shifter took him to the superintendent's office, then sent him to a doctor; that before that time he never had any trouble with his left eye but

(Testimony of Pete Sekinoff.)

had some trouble with his right eye; that he could see fairly good with his left eye when he started to work; he can see no one now with his left eye; that at the time he filed suit his eyesight seemed a little improved, but now his eyesight is worse; that he went back to the defendant company for employment but was told there was no place for him; that Dr. Dawes examined him; that he worked at Ketchikan a short time but was unable to hold his job; that his right eye was very tired then.

Cross-examination.

That he has lived in Alaska for twenty years and is forty-seven years of age; that during that time he has worked in Interior Alaska, and he worked around [8] Juneau and in the Alaska Juneau Mine in nineteen eight, nineteen twenty-eight; that he worked steady for the defendant company but was laid off; that he believes he worked the whole month of December but is uncertain; that in nineteen twenty-seven he worked for the Cold Storage; that when he was working in the Cold Storage plant he had no trouble with his left eye; that six months before his left eye was hurt, his right eye bothered him; that he does not know what caused the trouble to his right eye; that he only had the trouble for about six months; that in 1927 he had no trouble with either eye and received no treatment for either eye; that he had no trouble with either eye when he worked for the Alaska Juneau in 1928 and 1929; that six months before he was injured his right eye troubled him but he never had trouble in 1927

(Testimony of Pete Sekinoff.)

with his eyes; that in 1926 he was in Seattle and had no trouble with his eye; that he did not have a contract on a road in Seattle or Spokane; that he never applied for work down there; that he never applied for work under state contract; that he had no trouble with his eye; that in 1925 he was in Seattle, working there; that in 1924 he was in the penitentiary and had no trouble with his eye; that he was in the penitentiary for six years, and had no trouble with his eye; that the first time he had trouble with his eye was six months before he got hurt at the Capitol Building; that while working for the Cold Storage or before that time he never was treated by a doctor, for his eye; that he does not know what went into his eye at the Capitol Building and never did know, nor what it did to his eye; that his eye began to bother him while he was working for the Alaska Juneau, he didn't know what it was but something [9] was wrong with his right eye; that while he was picking out something at the Capitol Building a rock hit him on the eye, the left eye; that he swore in the complaint that he did not know what hit him in the left eye; that he did not know what was meant by a cataract; that Dr. Dawes told him at one time that he had a cataract in his left eye; that Dr. Council also told him he had a cataract on his eye; that Dr. Pigg gave him a prescription and told him to wash his eye and soon it would be better; that two months ago Dr. Pigg told him that his eye was all right; that Dr. Pigg was the company doctor; that two months

(Testimony of Pete Sekinoff.)

after he was injured Dr. Pigg told him that his eye would be all right; that he went to see Dr. Council the same day he saw Dr. Pigg; that he went to see Dr. Council on his own accord; that several days after he was hurt he went to see Dr. Pigg; that Dr. Pigg treated him nearly two months; that after that he went to see Dr. Council, two months after his eye was hurt; that it was then that Dr. Council told him if he paid him \$250.00 he would operate on plaintiff; that the Dr. merely told him he needed an operation on his eye; that on the 29th of November last, he went to see Dr. Council in company with Mr. Hellenthal and Mr. Faulkner; that he does not know what Dr. Council said at that time; that the only time he treated with Dr Pigg was for two months, after the accident and never before the accident; that he did not know he had a cataract on his eye; that he did not know if Dr. Pigg was the company doctor or not, or who was the company doctor; that he does not know the exact date but he got the dirt in his eye some time between January 10th and 15th; that he worked there until the night of the fourteenth, he believes, a full day; that Dr. Dawes gave [10] him a letter to give to the superintendent; that he gave the letter to the bookkeeper who threw it in a box, saying that he didn't care for that; that he does not know what was in the letter Dr. Dawes wrote as he did not read it; that he gave it to the timekeeper; that for the first two months Dr. Pigg treated him; that at that time he did not offer to pay Dr. Pigg \$100.00

(Testimony of Pete Sekinoff.)

if he would give him a certificate that his eye was injured; that after the suit was brought he went to Ketchikan; that he tried to get work in Ketchikan; that he worked for the sawmill; that he did not work for the Prohibition Director this summer and never did any work for him; that at one time he had been convicted of a crime; that he never had any trouble with his eye while in Seattle nor any trouble with his eye while working for the Cold Storage Company; that while working for the Alaska Juneau he never had any trouble with his eye, except his right eye about six months before he got hurt; that the left eye was never troubled before he got hurt.

Redirect Examination.

That he was in Nome, Alaska in 1909 and while there worked for several years, for himself as a miner, and at another time for a company; that when he had trouble with his right eye he went to Dr. Pigg which was in 1929; that at that time he was working for the Alaska Juneau; that after he got hurt he went to Dr. Pigg because the superintendent told him to; that he treated with Dr. Pigg for two months; that after he left Dr. Pigg he went to Dr. Council; that after he saw Dr. Council, he went to Dr. Dawes; that he only went to Dr. Dawes once, at which time Dr. Dawes gave him the note.

Recross-examination.

That Curtis and the shifter sent him to Dr. Pigg; [11] that he does not know where Curtis or the

(Testimony of Pete Sekinoff.)

shifter now are; that he never treated with Dr. Pigg before the accident; that in 1929 he did not treat with Dr. Pigg; that in 1929 his right eye troubled him, about six months before he was injured; that that was all the treatment he had with Dr. Pigg; that in January, 1930, the left eye and in 1929 the right eye was troubled; that he does not know where his right eye was injured; that he did not want Dr. Pigg to give him a certificate to the Alaska Juneau mine that he got his eye hurt there; that in 1929 while working for the Alaska Juneau was the first time he was treated by Dr. Pigg for his right eye; that he knew Dr. Pigg for a long time but never had any treatment from him before that time.

Redirect Examination.

That he went to Dr. Pigg for nearly six months for his right eye.

Witness excused. [12]

TESTIMONY OF DR. DAWES, FOR PLAINTIFF.

Dr. DAWES testified: That I am a practicing physician and surgeon; and that I have been for a considerable time; that I know Peter Sekinoff; that I do remember him coming to see me some time in March, 1930; that at that time I did examine his eye; that the condition of the eye was a cataract; that at that time I got the history of the case and made out a note for the boss; that the note was—to

(Testimony of Dr. Dawes.)

give it attention; that at the time I examined the eye, he said there was no sight in it; that there is no sight in the eye now; that to my best judgment it seems that he is telling the truth, from the looks of it; that at the time I examined the left eye, I did not know what it indicated, except to take his word for it, then, I would say it was traumatic, that was the history he gave me; that from the history I would say it was traumatic; that there was no way of telling at the time I sent this note how long he had had this cataract; that it might have been two weeks, might have been a year.

Cross-examination.

That this was March, 1930, as I remember; that I gave him a note to the company; that he returned the note to me and I threw it away; that at that time he had a cataract; that I have examined the eye since; that he still has the cataract and I should call it ripe; that it is ready for removal; that there is no way to tell from the examination of the eye what caused the cataract; that the effect of the cataract on the eye is that it is so big that light can't get in; that when the cataract is removed, light can get in, but you have to replace the lens with artificial lens, but you can't see; that with glasses you can see; that this cataract is ripe, I am not an *experience* man in that work; that all I know [13] what happened to him is what he told me.

Redirect Examination.

That from my observation the cataract could

(Testimony of Dr. Dawes.)

have been caused by the injury he described to me; that from my experience and the examination of this eye I would say that he can see with the other eye; that he cannot see with the left eye; that he might have some light preceptions, I didn't test that; but not enough to see anything.

Recross-examination.

That there are a number of different causes of cataracts; the two most frequent causes are senility and acute trauma; that I believe it does occur in diabetes, certain clinical diseases; that the most common form of cataract is senile; that that occurs after forty or fifty years of age, as a rule; that they can generally be removed; that a traumatic cataract is a cataract caused by an injury; that some authorities state, to cause a traumatic cataract, there must be a rupture of the lens, so that the aqueous humor or fluid in the chamber penetrates that capsule, turning the fluid white; that (indicating on chart) this is the lens; this is the anterior chamber; that the chart represents the eye and eyelid; that it represents a cross-section of the eye; that this is the cornea; this is the anterior chamber or aqueous humor; this is the lens and this the posterior chamber or vitreous; that this is the eyelid here, closed. Some authorities claim a traumatic cataract is due to rupture of this membrane here (showing on chart); that is called the capsule covering; I forget the name of it; that is what I call the capsule, that allows this fluid to soften or change that tissue

(Testimony of Dr. Dawes.)

and change it to white; that the lens is a thicker, clear substance, than this; that it is gelatinous, but clear; that traumatic cataract is caused by rupture of the capsule; that it is rupture of the [14] capsule lens permitting the aqueous fluid to get into the lens; that is caused in a traumatic cataract from a force of some kind exerted on the anterior part of the eyeball; that it could be a blow or something that pierces the capsule; that ordinarily a piece of dirt getting into the eye, showing no evidence of piercing the capsule, would have to be pretty good sized, with sufficient force to exert force enough to rupture that membrane, according to the best authorities; that there was no evidence, when I examined Mr. Sekinoff, of anything having penetrated that; that if a blow was struck on the eye and if it was piercing you would have an injury showing on the surface of the cornea, but if it is with a blunt instrument with sufficient force to cause rupture, it might cause it without trauma showing on the surface; that there was no such evidence of any such thing on Peter Sekinoff; that the effect on the patient, of that kind of a blow or that sort of piercing the capsule would be pain and immediate pain; that it would be possible for a man to go on with his work after, if he suffered such a blow; that it would cause him considerable pain at the time; that if an ordinary piece of dirt, sand or mud going in there causing a rupture of the capsule would be sufficient to cause trauma, I would have to know the size of it, know the swiftness of it;

(Testimony of Dr. Dawes.)

that it would have to drive with considerable force and have some size to it; that the effect upon eyesight of an injury of that kind, there probably might not be very much; it depends upon the injury; there might not be very much immediately, but usually there is; usually there is inflammation and watering of the eye.

Recross-examination.

That in removing a cataract, they make a little incision through here like this: that little flap comes out this way; they go down here with a little hook, tear a hole in the capsule, and with pressure above, here, it forces the capsule [15] out through the wound, and smooth this over; and it heals; there is a loss of this liquid, but it fills up again; that glasses take the place of the lens or otherwise there would be no sight.

Redirect Examination.

That it would make a difference whether the ground was frozen or not frozen, if it was hit with a blunt instrument; that if it hit the eye hard enough it might cause traumatic cataract; that it would not necessarily leave indications that could be shown two months after; that this lens (indicating on chart) takes the place of human lens; that this lens, that is removed and replaced has to be adjusted to distance; that if you get a lens for one distance you can't use it for another distance, but must have two lenses; that if you look a distance—you have to have your lens adjusted for

(Testimony of Dr. Dawes.)

certain distance; that if you looked beyond that distance it couldn't co-ordinate with the other eye—I wear a lens for distance and make it do. Of course there is something to that. I don't know as I could explain it to the jury—but the human lens has power to change itself to a certain extent, and when it is gone you have lost the power of accommodation; that if you have one eye with a human lens and the other with an artificial lens, they do not co-ordinate. Lots of times you are unable to bring the operated eye up to normal and they don't act the same, and it creates a certain amount of blurring; that in the case of the loss of the other eye it would be very important to use an artificial lens; that should you lose the good eye then there would be a great advantage in the artificial lens.

That is all.

Mr. FAULKNER.—I want in connection with the doctor's examination, to introduce the chart as defendant's exhibit. [16]

Mr. HELLENTHAL.—No objection.

The COURT.—It may be marked Exhibit 1 for the purpose of illustration.

(Eye chart was then marked Defendant's Exhibit 1 for illustration.) [17]

TESTIMONY OF T. L. CHIDESTER, FOR PLAINTIFF.

T. L. CHIDESTER testified: That I know the plaintiff, Peter Sekinoff; that I knew him in the

(Testimony of T. L. Chidester.)

fall of 1929, knew him fairly well; that I saw him quite often; that in the spring of 1930, I did notice this man's condition; that I observed the cataract on Peter's left eye; that I first observed it last March; that I did observe his left eye in the fall of 1929; that the cataract was not there at that time; that I did not see any cataract in December, 1929, and I observed him at that time.

Cross-examination.

That I have known Pete about four years; that I have known him pretty well; that I happen to know him because he came up to the prohibition office several times; that he did work for me; that the only thing I know—what a cataract is—is a white scum over the eyeball; that I don't know if that is the only thing that causes a white scum over the eyeball; that an object in the eye, I have been told, causes a cataract; that is a foreign object in the eyeball, there might be other things that cause it, I don't know; that I do not know what pterygium is; that I do not know what conjunctivitis is; that the lens of the eye is outside; that the vitreous humor is inside; that the retina is in the back, I think. [18]

TESTIMONY OF E. H. MEYER, FOR PLAINTIFF.

Mr. E. H. MEYER testified: That I have seen Peter Sekinoff around Juneau; that I first saw him when I came to Juneau about November 15th, 1929,

(Testimony of Mr. E. H. Meyer.)

in the prohibition office talking to Mr. Chidester; that I saw him about twice, I believe, prior to Christmas; that I saw him after he returned from Ketchikan after Christmas, probably about March of 1930; that Mr. Chidester was present when I saw him in March of 1930; that I know what a cataract is; that I don't know what I saw in his eye; I saw some inflammation in one of his eyes; that I don't remember which eye it was; that there was no inflammation in his eye in the fall of 1929.

Cross-examination.

That I have known him since 1929; that each time I saw him in the prohibition office; that he conferred with Mr. Chidester. [19]

TESTIMONY OF FRANK SEKINOFF, FOR PLAINTIFF.

FRANK SEKINOFF testified: That I know Peter Sekinoff; that he is a relation of mine; that I have lived with him; that we lived about a year or a year and a half together, 1929 and 1928; that in 1929 we lived at the Martin Apartments; that in 1929, November, I quit living with him and went to the Westward, I was working in the A. J.; that I left Juneau about the 12th of November; that we lived in the same room; that I saw him every day; that he had trouble with his right eye and was always going up to the doctor; that there seemed to be some kind of white stuff in his eye when I looked, sometimes; that was the right eye; that I never

(Testimony of Frank Sekinoff.)

looked in his left eye; that there was nothing wrong with his left eye; that I saw him again in 1930; that when I came back from La Touche in September, he came back from Ketchikan and we met in front of Behrends, I looked at him and saw there was something wrong with his eye, I asked him what was wrong with his eye but he didn't say anything, so I went to the postoffice and came back and then he told me— (Don't tell what he told you); that that was the left eye.

Cross-examination.

That Pete is my brother.

Redirect Examination.

Mr. HELLENTHAL.—That is all. [20]

TESTIMONY OF FRED HURLHREN, FOR PLAINTIFF.

FRED HURLHREN testified: that I am Fred Hurlhren; that I know the plaintiff, Peter Sekinoff; that I have known him close to two years; that we were working in the Alaska Juneau; that I was shift boss in the Alaska Juneau; that I was pretty well acquainted with him; that I knew him in the fall of 1929; that there was nothing wrong with his left eye during that time; that I left Juneau until February, 1930; that I saw Peter every once in a while between January first and the time I left; that I don't remember the last time I saw him, I don't think I saw him after the first of January; that

(Testimony of Fred Hurlhren.)

when I left in February, 1930, I went to LaTouche; that the next time I saw Pete it was the first of December, this fall; that I met him on the street; that I noticed right away there was something wrong with his left eye; that it was not there before. (The COURT.—When did you see him? First part of December. December of which year? Nineteen thirty.)

Cross-examination.

That I don't know what was wrong with his left eye; that I just saw there was something wrong with the left eye; that I could tell from meeting him on the street; that I see nothing wrong with your left eye; that you can see out of your eye pretty well.
[21]

Whereupon the defendant offered the following sworn testimony:

DEPOSITION OF R. M. CURTIS, FOR DEFENDANT.

R. C. CURTIS, by deposition, testified: That I am Roy M. Curtis; that I am Superintendent of the N. P. Severin Company; that they are engaged in the construction of the Capitol Building; that the N. P. Severin Company did at one time employ Peter Sekinoff; that was some time in January, I believe; of this year; that the nature of his employment was laborer; that he never informed me at any time while in my employ that he was injured; that he never applied to me for medical attention; that the

(Deposition of R. M. Curtis.)

first intimation I had of his claim of injury was when we got notice of his filing a suit for damages, when they served the papers on me.

Cross-examination.

That I never designated a doctor for him to go to; that I don't think that was ever done by anyone and have no knowledge of that kind being done.

It is subscribed and sworn to. We will offer this deposition in evidence.

The COURT.—It is admitted. [22]

TESTIMONY OF LOUIS DELEBECQUE, FOR
DEFENDANT (RECALLED).

LOUIS DELEBECQUE testified: That I have testified that I was timekeeper and bookkeeper for the N. P. Severin Company; that Mr. Curtis was superintendent in January, 1930; that on the 14th of January, Peter Sekinoff did not complain to me that he was injured while in the employ of the company; that the first intimation I had of any claim on the part of Mr. Sekinoff was when he came in with Dawes' note; that I don't remember exactly when that was; that approximately it was a month or two after he quit work there; that he quit work on January 14th, I believe; that the first indication I had was when he came in with Dawes' note; that I returned the note to him and told him to see Dr. Pigg; that I did not keep the note; that he never, prior to that time, applied to me for medical attention; that we always sent our men to Dr. Pigg;

(Testimony of Louis Delebecque.)

that Dr. Pigg was our doctor from the start of the job until he took his son to the states; that he took his son down there about six months ago, I don't know exactly.

Cross-examination.

That after Dr. Pigg took his son below some of our cases went to Dr. DeVighne, most of them went to Dr. Council. [23]

TESTIMONY OF DR. W. W. COUNCIL, FOR DEFENDANT.

Dr. W. W. COUNCIL testified: That I am W. W. Council; that I am a physician and surgeon; that I have been such for twenty-five and one-half years; that I graduated from the University of Virginia; that ever since I finished my hospital service, nineteen six, I began to practice and have practiced ever since; that my practice is general; that I do some practice that includes disease of the eye; that I am both physician and surgeon; that I know the plaintiff, Peter Sekinoff; that I did examine his eye, I believe in April of last year; that I believe it was at that time that he consulted me as a physician; that he had a cataract; that the cataract was on his left eye and was pretty well advanced; that I may have examined the plaintiff since that time, but I don't remember; that perhaps two days after Thanksgiving I did examine the plaintiff; that it was possibly November, 1929, my note would show it if I did, but I have no independent recollection

(Testimony of Dr. W. W. Council.)

of the same; that I could not tell from my examination what caused the cataract; that if the injury took place on the 14th of January, 1930, in order for a cataract to develop that early he would have had to have a rupture of the capsule of the lens, that is, he would have had to have a blow severe enough or hard enough to rupture the capsule of the lens or puncture the lens; that I saw no scars; that a cataract can be removed; that it is a comparatively simple operation when it is ready; it is a delicate operation, of course, but there is very little reason to fear; that this is the lens of the eye (indicating on the chart throughout), what is called the crystalline lens; this has the power of changing its shape and thereby focusing the light rays which pass through coming in and focus them on the retina back here; that is your image [24] of whatever the light rays come from; well, this is perfectly clear, and it has these little muscles attached to here for the power of accommodation or changing its shape. Well, a cataract is simply a clouding up of this lens, so that the light rays don't pass through, and usually is a gradual process unless this capsule is ruptured allowing it to change the composition and cloud up rapidly. Mr. GRIGSBY: Object is immaterial in this case as to what you do in order to restore vision. It is immaterial whether or not an operation could remedy the situation or not; the law is plaintiff is under no obligation to have an operation performed, and his present condition is the vital point in the case. The Court

(Testimony of Dr. W. W. Council.)

overruled the objection. (Last question read.) That you wouldn't do anything to restore vision; you would already have vision; you would—you could see at a distance fairly well, but you would have to have in looking at closer objects, you would have to have a lens outside the eye, that is a glass lens, similar to this convex lens, to focus the rays on the retina; that you would get fairly good vision that way; that there are a good many different kinds of cataract; that the most common is traumatic cataract; so called from blows or injury, and senile cataract; senile cataract is simply a slow development, the lens kind of clouding, in old people; that this generally occurs from sixty on up; that it may occur from forty on; that a senile cataract is called a common cataract; that diabetes cataract occurs sometimes in persons suffering from diabetes; that when you have an injury to the eye a cataract is caused by rupture to the capsule; the lens is in the capsule, a layer of tough tissues holding the lens in place, and there is a rupture of the capsule allowing other matters of the eye—the aqueous liquid to penetrate the lens; that in order to have traumatic cataract the blow would have to be severe, or a piercing wound, which would penetrate the [25] capsule; that I didn't see any scars; that I cannot call to mind having made an examination of this man November 29th, in the presence of Mr. Hellenthal and Mr. Faulkner.

Cross-examination.

That the injury to the eye was simply a clouding

(Testimony of Dr. W. W. Council.)

of the lens; that the operation you make on it is the removal of the lens; that this natural lens focuses the light rays; that it does so by adjusting its shape; that if this is removed you have to replace the natural lens with a glass lens; that you probably would have to have different glasses for each distance—in a person who has begun to wear glasses in old age that hardens up and doesn't adjust itself rapidly, and that is why we have to have different glasses; that in a man of forty or fifty, if he has the lens removed, he would have to have at least two glasses in order to co-ordinate with the other eye; that he would have to have one for reading and one for distance; that in order to co-ordinate you would have to have another glass; that nearer than that he would have to have two; that the natural lens adjusts itself to every distance, up to a certain age. Even after that age you have to correct it—you have to do that with glasses which you ordinarily do with two pairs of glasses; that your lenses changes in shape but very slowly; that I don't think that it would be out of focus with the two eyes, nor that the sight he gets with one eye would interfere with the sight he gets through an artificial lens; that if the lens were exactly focused for that distance it would be all right; that if they were not focused thus, he would be seeing with each eye individually; that a great many people who have perfect sight in both eyes only use one eye, that is, they see everything with one eye; that if the lens were not properly adjusted he would

(Testimony of Dr. W. W. Council.)

see with only one eye; that it would be distorted if he had a lens if it distorted the rays; that if you had a perfect lens at ten feet there would [26] not be very much distortion, at twenty feet, nor at a distance of thirty feet, twenty feet is the regular distance for fitting glasses for long distance vision, and after that it doesn't make any difference; that if these glasses are fitted for a person with the lens in natural condition that natural condition of that lens helps to focus, even with the glasses; that if the lens is taken out it can't help that focussing any more; that there would be use for the man's eye provided he lost the other eye; that he would only have this eye he could see with; that there would be no distortion; that it is possible as long as he has a good eye they are more or less at variance, but I have perfectly good eyes and only use my right eye; that the vision isn't just as clear in it; there is nothing wrong with my eye; but at the same time, if I close my right eye I can't read or anything with my left eye unless I use a glass, an oculist told me it was because I didn't use that eye; that I adjusted myself to that condition; that I was born with it; that a person thirty or forty years old has already adjusted himself, if he were born in that condition; he isn't seeing at all out of that eye. [27]

TESTIMONY OF DR. W. J. PIGG, FOR DEFENDANT.

Dr. W. J. PIGG testified: That I am W. J. Pigg; that I am a physician; that I have been practicing since 1904; that I graduated from the University Medical College, Kansas City, Missouri, and have been practicing continuously since; that I have practiced in Juneau since 1922; that my practice includes minor treatment of the eye; that I know Peter Sekinoff; that I have known him since they built the Cold Storage; that I don't know what year that was; that in the year they built the Cold Storage I treated his eyes; that I treated both eyes; that he had trouble with both eyes at that time; that I have treated him, you might say, continuously all the time he was in town; that I have treated him since the year the Cold Storage Plant was built and up to a few months ago; that during that time he worked for the Alaska Juneau Mining Company; that I don't know what years he worked there but it was after the Cold Storage plant was built; that I treated him when he worked for the Alaska Juneau Company, treated his eyes; that I treated both eyes; that he had a cataract in one eye, I don't know which one and had some weakness in the other eye, I couldn't tell just exactly what it was; that he had a cataract coming when I treated him when he worked for the Cold Storage plant; that in 1930, January, I had occasion to treat him; that he came to me—he said a few days prior to that I think it was, that he got some sand in his eye; the

(Testimony of Dr. W. J. Pigg.)

boss took it out, and he said he lost his job; he wanted me to help him get his job back, he did not say why he lost his job; that I think I know why he lost it; that at that time I examined his eyes; that there was nothing different about the eye from what I had seen before; that I examined it well; that he had a cataract on it then; that he wanted me to help him get his job back, and when he couldn't he wanted me to help; that he offered me fifty dollars to swear—if it came to [28] court—to say I never treated his eyes at all. I told him that that wasn't enough, so he offered me a hundred dollars and I told him that was just about enough to send him back to the penitentiary; that in January, 1930, is when he claimed he got hurt; that when he was working for the Alaska Juneau Company he wanted me to get the company to send him out to get his eyes treated, I don't remember what year that was but it was before the construction of the Capitol Building; that I have no history of this case; that I do not keep record of such cases as that, because he was always working for a company; that because he was working for a company, and they gave me an order and I send in a bill; that it isn't necessary to keep a record when he was working for a company; that I did not keep a record of the case when he came to me in January this year and said he got hurt at the public building; that I can't say for certain whether he came to me for two months after that but he came practically every day; that it was during the last trip he made that he offered me fifty dollars; that he said, "I give

(Testimony of Dr. W. J. Pigg.)

you money you say you never treated my eyes.” I said, “Say where, Pete?” He said, “To the Court House to the Judge.” I said, “That isn’t enough.” He said, “I give you a hundred dollars cash money” that is if I said I never treated either eye; that I treated both eyes previous to that time; that I talked to Mr. Hellenthal and Mr. Grigsby about 10 o’clock yesterday morning; that I treated both his eyes; that I didn’t say I couldn’t remember which one it was, you asked which eye had a cataract, I didn’t know which one; that I did not say that I could not remember which eye I treated; that I could not swear to which eye the cataract is on; that when I saw him in January I don’t know which eye had the cataract; that the cataract was very visible in January and practically developed; that while he was working for the Alaska Juneau and during my previous treatment of him he had a [29] a cataract in one eye which was barely discernable; that I did not say barely discernable; that I do not mean to tell the jury that the cataract was practically in the same condition in January as it was when he worked for the Alaska Juneau; that it is some more developed then when he worked for the Alaska Juneau; that I do not know which eye was troubling him when he worked for the Alaska Juneau; that there was trouble with both his eyes; that he had a cataract on one eye; I had a suspicion he was going to have one on the other, he complained of it; that I did not see one on the other eye; that he came so often and I cleaned it out with a little lysol solution; that was

(Testimony of Dr. W. J. Pigg.)

when I treated him and any time he came; that he came to the office and said—about as near as I can get it—he says, “I want you to help me get money; you say nothing to the court—court Judge—about my eyes you didn’t see my eyes”—to that effect anyhow; that I might not be able to repeat the words he used, word for word; that he said he would give me fifty dollars; that I might not use exactly the same words that he used; that he offered me a bribe to testify falsely; that is what I know; that he said, “I will give you fifty dollars cash money”; that when he was working for the Alaska Juneau he claimed he got something in his eye up there; that he asked me if I would use my influence to get the company to send him outside to get his eye fixed; that he did not offer me a bribe then; that I am not necessarily the company’s physician; I have had something to do for them in other matters; that until I went out I think they did send all their patients to me. That I am not the doctor for the mining company at this time; that I have no relation whatever with the Severin Company; that I have no one under treatment for the company at all. [30]

TESTIMONY OF DR. R. E. SOUTHWELL, FOR
DEFENDANT.

Dr. R. E. SOUTHWELL testified: That I am Dr. R. E. Southwell; that I am an optometrist; that I graduated from the Los Angeles School of Optometry; that I practice in the Valentine Build-

(Testimony of Dr. R. E. Southwell.)

ing, Juneau, Alaska, as an eye specialist; that I have been here two years; that I know the plaintiff since Monday night; that I met him Monday night at my office; that I made an examination; that Mr. Hellenthal and Mr. Faulkner were present at the time; that I examined the left eye at that time; that the condition of the eye was a cataract nearly ready for operation; that there was no evidence of an injury there; that there are many different kinds of cataract, the most simple kind in the eye is traumatic, senile, diabetes, epthritis; that traumatic cataract is due to an injury; that the cause of traumatic cataract is by electric shock or lightning storm or something that will pierce the capsule of the lens, letting the acreous humor be absorbed by the lens; that cause is allowing the acreous humor to get into the lens; that in order to do that you must have a rupture or piercing of the capsule, some place through here (shows on chart); that it would take a very hard blow to cause traumatic cataract, or a piece of steel get in there; that it would leave a scar on the cornea; that the cornea is here (indicating on chart); that there was no evidence of any scar or puncture in the man's eye; that it would not be sufficient to cause a cataract to the eye, in the stage of development it was Monday, by being hit with some foreign substance in his left eye; that it takes a period of years in most cases to develop a cataract; that would not, in my opinion, cause a cataract at all; that it would take a real severe blow; that in that case there should be evidence of the injury on the cornea of the eye;

(Testimony of Dr. R. E. Southwell.)

that senile cataracts show in the fiftieth year mostly, ready for operation, in the fiftieth year, sometimes as early as forty; [31] that they show from between forty and fifty on up; that a cataract could be removed and it isn't very serious; that when the cataract is removed you can get vision by an optic lens, a powerful crystalline lens that takes the place of the natural lens; that I am not a physician; that measuring for lens; optometry; to measure the eyesight by lenses, and treat by lenses, and renew vision, and so on; that I do not perform operations for cataract; that this is not in my line of work; that I measure the eyesight; that I correct the trouble in the eye; that in this case if this cataract were removed then there would have to be an artificial lens placed in place of this natural lens; that the natural lens would be removed by the operation of removing the cataract; that the natural lens accommodates itself to distance; that artificial lenses do not accommodate themselves to distance by themselves; than an artificial lens cannot accommodate itself; that the iris of the eye regulates the light; that it also accommodates distance to certain extent; that it would not be difficult to use an artificial lens and a natural lens together; that if the lens were adjusted at a certain distance, which would be twenty feet, that takes care of farther; that if you come to ten feet the vision would be clearer with the artificial lens; that if you bring it within three feet the vision would be poor; that there is a change between three feet and ten feet; that you could see between three

(Testimony of Dr. R. E. Southwell.)

and ten feet but the change starts at three feet; that the vision would be getting better and better from three feet off; that it would be better at ten than three in the artificial lens, it would also be so in the natural lens; that it would be better after you got farther away; that the other eye, the natural eye, is in good shape, is of value after an operation for the removal of the cataract and that the artificial lens placed in the eye; that you can take and close the good eye, the artificial lens, cataract lens, and have practically [32] normal vision if the retina or optic nerves are not affected; that the two eyes would not co-ordinate perfectly; that there is always a little lack of co-ordination; that that is more so as you grow older; that between the natural lens and artificial lens there is some difference; that I do not treat an injury to the eye at all, I recommend physicians. That the natural tendency of a person's eye, who has to wear glasses, as they grow older, is that they don't co-ordinate; that is the reason glasses have to be adjusted; that the eyes are nearly all different in most cases; that one eye will see better than the other. [33]

TESTIMONY OF HECTOR McLEAN, FOR DEFENDANT.

HECTOR McLEAN testified: That I am Hector McLean; that I am employment agent, Alaska Juneau Gold Mining Company; that I have been such agent since 1916; that I know the plaintiff Peter Sekinoff; that I have known him during the past

(Testimony of Hector McLean.)

four or five years; that he was employed by the Alaskan Juneau Company; that he was employed there in 1928 and 1929; I think he worked there in 1927 too; that he is about fifty-four years old; that I got that from his employment card; that I was one time at Doctor Pigg's office and he was there; that there was something wrong with his eye and Dr. Pigg was treating him; I don't know what was wrong with it; that was in nineteen twenty-nine; that the cold storage plant was built in nineteen twenty-seven. [34]

TESTIMONY OF DR. R. E. SOUTHWELL, FOR
DEFENDANT (RECALLED).

Dr. R. E. SOUTHWELL again testified: That I have sworn that I examined the plaintiff's eye, and I examined his right eye; that I found a starting cataract in his right eye; that the cataract is about three years old; that it is pretty hard to say how old the cataract on his right eye is; that the cataract commenced to develop some time before it is visible and diminution of vision; that it might be some years before you know it; that if the plaintiff were injured in his left eye in 1930, in my opinion it could not possibly cause a cataract in the other eye. [35]

TESTIMONY OF PETER SEKINOFF, FOR
DEFENDANT (RECALLED).

PETER SEKINOFF testified: That I have heard Dr. Pigg's testimony about my offering him

(Testimony of Peter Sekinoff.)

fifty dollars; that I never told him anything; they sent me from office, from superintendent; I came down and he asked me where I work, I said, "Capitol Building"; that I said nothing about paying him something for saying something; that I told Dr. Pigg what was wrong, and he gave me a prescription; that was the talk at the time he gave me the prescription; that is the time he gave me the prescription. He told me my eyes were all right, and go to the drugstore and get some medicine for my eyes and they are all right now; that I told him to keep on caring for my eye and I would pay him something; that I did not tell him how much I would pay him; that I did not say anything about fifty or one hundred dollars; that I asked him how much he was going to charge, he told me he could do nothing, that I could do it myself; that is the time he gave me the prescription (Mr. Hellenthal offered prescription as evidence, marked Exhibit "A" for Defendant). (Mr. Hellenthal shows prescription to the jury, marked Exhibit "A" and dated March 1st, 1930.) That that is the last time I went to Dr. Pigg's; that at one time Mr. Chidester wanted to get me a job on a boat but the wages being only \$70.00 I said it was too cheap. One time I reported a man and this got him into trouble with Chidester; that I do not remember how much he gave me, I forgot; that I see Chidester for my eye, and tell him about it, that is all, several times I have met him on the street and spoken to him; that I was in the prohibition office and talked to him one time; that I was never on the Government

(Testimony of Peter Sekinoff.)

pay-roll; that I never got a regular salary from him for a week or a day or a month; that Dr. Pigg only treated one eye, the right eye; that sometimes he made a mistake and put stuff in my left eye instead of the right eye; [36] that because I did not understand what you told me, look like you tried to find out if I worked when I never tried to work; that I have been in this country for twenty years; that I never worked last summer for Chidester or the prohibition office; that I never did work for the prohibition office; that if Mr. Church says I did it is not true; that one time I see one fellow and reported him that is all I know; that Ralph Beistline did not fire me down at the Alaska Juneau because I was working for the prohibition office; that that is not true; that the boss at the Capitol Building did not fire me because I was doing some work for the prohibition office, I was not fired; that I never did work for the prohibition office or Chidester; that I just know him just speak to him sometimes, something like that is all; that I was in his office for him to see my eye; that is what I was up *therefore*; that Chidester asked me about my eye; that he asked me in his office, that I just went up to his office; that I know him for a long time and always speak to him just as a friend, but had no business with him, because he is a prohibition officer it makes no difference to me; that I know Harry Sokoloff; that Harry Sokoloff and I never did work for the prohibition office; that I never had any trouble with Sokoloff over at the prohibition office; that I don't know how long Chi-

(Testimony of Peter Sekinoff.)

dester has been in Ketchikan; that I don't know how long Mr. Chidester has been there; that last summer I worked in the sawmill in Ketchikan; that I came back to Juneau in the fall; that I have been traveling around a good deal in order to find some work and to get rich; that I never was in Petersburg; that I came here in November from Ketchikan; that after that I stayed in this town; that I did not go to Sitka; that I don't remember going to the prohibition office on the 20th day of January, when Chidester wasn't here; that I forgot whether I went up to the prohibition office on the 20th of January; that I don't remember going up to the prohibition office since coming [37] back from Ketchikan; that maybe I wanted to find out if Chidester got back from below yet; that I did not go up there quite frequently; that I was never employed by the prohibition office; that I never told Dr. Pigg I would give him money, for him just to fix my eye because I did not want to be blind; that Dr. Pigg didn't tell the truth when he said I wanted him to come up here and testify that he never treated me; that I didn't offer him fifty dollars or a hundred dollars; that I did not want him at one time to give me a certificate to the Alaska Juneau and get compensation; that is all false; that you, Mr. Hellenthal, sent me to the prohibition office to find out whether Mr. Chidester was in town; that you sent me a couple times, I guess. [38]

TESTIMONY OF T. L. CHIDESTER, FOR
DEFENDANT (RECALLED).

Mr. T. L. CHIDESTER again testified: That the plaintiff was never employed by the Bureau of Prohibition as an employee. I gave him money on two or three occasions. He used to come up and give me information occasionally; that he gave me information a few times and I gave him some money; that is the only employment that ever existed between the plaintiff and me; that I never did employ him at Ketchikan; that it has all been in Juneau; that there was no regular employment; that he gave me information two or three times and I gave him something for it; that that was just for giving me the information.

Cross-examination.

That the money I gave the plaintiff was not Government money; that I did that myself; that I have known him about four years; that in return for the information he gave me, I gave him money out of my own pocket; that I have no way in getting that back from the Government; that that is purely a personal matter; that that is the only connection he had with the prohibition office; that we have a provision where we can employ funds for that purpose; that I did not do that with him; that he used to come up to the office quite frequently and talk to Mr. Church; that I haven't been here much last year; he was up last December when I was here, and also January; that it was between him and

Sokoloff that they had trouble, I believe; that they were both just giving me information at that time. [39]

Whereupon the evidence being all in, the defendant made the following motion:

Come now the defendants and move the court to direct the jury to find herein a verdict in favor of defendants. This motion is made upon the following grounds, to wit:

First: That there is no evidence in this cause of any decrease of earning capacity of the plaintiff.

Second: That there is no evidence in this cause that the plaintiff suffered the total loss of his left eye within the meaning of the Workman's Compensation Act of Alaska, referred to in the complaint. [40]

(After extended argument by counsel on both sides, the following occurred:)

The COURT.—I am of the opinion that it will be necessary to direct a verdict in this case, for the defendant. It seems to me counsel has laid his complaint on loss of earning capacity, and as I view it there *it is* a total failure to show any loss of earning capacity whatever.

In the first place to show loss of earning capacity you have to show there is an earning capacity that was lost. It (the evidence) doesn't show whether his sight was good before, or whether he wore glasses. But earning capacity also depends on other things than sight of an eye. His general physical condition—there is nothing to show his general physical condition, unless we assume the

fact he worked on this building for the periods he specified he worked, would show it; nothing to show he was healthy or not, or anything about him; no basis of comparison; nothing to show he had anything to lose; nothing to show he had any earning capacity; and further than that there is no per cent shown. All the jury could do in the matter of earning capacity would be to go out and guess. There is nothing which shows what per cent he has lost, in any way. I checked the evidence up carefully yesterday and I can see nothing a jury could do but guess at the loss of earning capacity. This man wouldn't be denied the case going to the jury if he had shown any such evidence.

Now you come in here and claim there is also an allegation of loss of an eye. I am of the opinion that the showing of the cataract does not constitute that permanent [41] and total loss of the eye that would have to be shown to entitle him to recover under the Alaska statute without basing it on earning capacity. I do not think the showing that a cataract formed as a result of an injury is sufficient. The burden, it seems to me, is on the plaintiff to show the complete permanent total loss, and when he shows a cataract I don't think he has shown that, regardless of the Illinois case (cited during argument). All the doctors who testified have stated that a cataract is operatable; that there is a considerable use of the eye after the operation is performed. It seems to me the burden is on him to show total, permanent disability under this pleading.

So I can't see that he proved a case. If he had come in and proved loss of earning capacity there is no question but that the case would have to go to the jury on that; but I can't see how the jury could do more than go out and speculate, because there is no earning capacity shown in the case whatever.

Call the jury.

(The jury returned and took its place in the jury-box.)

The COURT.—Ladies and Gentlemen of the Jury: Motion has been made in this case for me to direct a verdict on behalf of the defendant. I feel under the evidence in this case that there is a total lack of evidence sufficient to sustain a finding by a jury for the plaintiff. It is my duty to direct you to return a verdict in this case for the defendant. You will therefore retire.

Mr. GRIGSBY.—I take an exception, if your Honor please.

The COURT.—Exception allowed. [42]

Mr. HELLENTHAL.—Will the Court again note an exception to the receiving of the verdict?

The COURT.—Exception will be noted.

The verdict will be received and filed.

Thereupon the case was closed and the jury excused. [43]

CERTIFICATE OF JUDGE TO STATEMENT OF EVIDENCE.

United States of America,
Territory of Alaska,—ss.

I, Justin W. Harding, Judge of the District

Court for the First Division, Territory of Alaska, hereby certify that the foregoing statement of evidence and proceeding had is a full statement of the evidence and the proceedings had in the above-entitled cause, except Exhibits "A" and "F," and further certify that the original statement herein was filed with the Court on the 9th day of March, 1931.

Allowed this 23d day of March, 1931, in duplicate, one of said duplicate originals to be forwarded to the Circuit Court of Appeals.

JUSTIN W. HARDING,
District Judge.

O. K.—H. L. FAULKNER.
Attorney for Defendant. [44]

In the District Court for the Territory of Alaska,
Division Number One, at Juneau.

No. 3064-A.

PETER SEKINOFF,
Plaintiff,

vs.

N. P. SEVERIN CO., a Partnership of Which
N. P. SEVERIN and A. N. SEVERIN are
Members,

Defendant.

JUDGMENT.

This cause came on regularly to be heard on February 11, 1931, before the Court and a jury, and

both parties announced ready for trial (the said jury having been duly selected, empaneled and sworn), and the said jury having heard the evidence, and having been, on February 13, 1931, instructed by the Court to return a verdict for the defendant, returned into court the following verdict, to wit:

“In the District Court for the Territory of Alaska,
Division Number One, at Juneau.

No. 3064—A.

PETER SEKINOFF,

Plaintiff,

vs.

N. P. SEVERIN COMPANY,

Defendant.

VERDICT.

We, the jury in the above-entitled cause, find for the defendant.

JOHN B. GODFREY,

Foreman.”

It is therefore considered by the court, and IT IS ORDERED AND ADJUDGED, that the plaintiff take nothing by his action herein; that the defendant go hence without delay, and that the defendant have and recover of and from the plaintiff their costs and disbursements herein to be taxed by the Clerk, for which let execution issue. [45]

Done in open court this 7th day of March, 1931.
 Exceptions allowed plaintiff.

JUSTIN W. HARDING,
 Judge.

Copy received Mch. 7, 1931.

H. & H.

Filed March 7, 1931. [46]

[Title of Court and Cause.]

ASSIGNMENT OF ERROR.

Comes now the plaintiff appellant and with his petition for appeal, presents this, his assignment of error and assigns the following error, upon which he will rely for reversal;

I.

The Court erred in allowing the defendant's motion for a directed verdict and directing the verdict herein and entering judgment on said directed verdict.

HELLENTHAL & HELLENTHAL,
 Attorneys for Plaintiff-Appellant.

Copy received and service admitted this 7th day of March, 1931.

H. L. FAULKNER,
 Attorney for Defendant.

Filed Mar. 31, 1931. [47]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Honorable JUSTIN W. HARDING, Judge
of the District Court for the Territory of
Alaska, Division Number One at Juneau:

Comes now the above-named plaintiff, Peter Sekinoff, by his attorneys, Hellenthal & Hellenthal and complains that the court erred in directing a verdict for the defendant, and also in the rendition of the judgment in the above-entitled cause, which said judgment was dated the 7th day of March, 1931; that manifest error hath happened to the great damage of the plaintiff, as will more fully appear from the assignment of error filed herewith.

WHEREFORE the plaintiff prays that an appeal be allowed him; that a citation may issue and a transcript of the record be sent to the Appellate Court and for an order fixing the amount of the cost bond in this cause and for such other orders and processes as may cause the said errors to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 7th day of March, 1931.

HELLENTHAL & HELLENTHAL,
Attorneys for Plaintiff and Appellant.

The above petition and appeal is allowed, and the cost bond fixed at \$100.00.

Dated this — day of March, 1931.

JUSTIN W. HARDING,
District Judge.

Copy received Mch. 7th, 1931.

H. L. FAULKNER,
Attorney for Defendant.

Filed Mar. 7, 1931. [48]

[Title of Court and Cause.]

APPEAL.

The President of the United States, to the Honorable JUSTIN W. HARDING, Judge of the District Court for the District of Alaska, Division Number One, at Juneau, GREETING:

Because of the record and proceedings and also in the rendition of the judgment in said District Court before you, in the above-entitled cause, manifest error hath happened to the great prejudice and damage of the plaintiff, as is stated and appears in the petition herein,—

We being willing that error, if any hath happened should be duly corrected and full and speedy justice be done to the parties in this behalf, do command you, if the judgment herein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, together with this writ so that you have the same before the court on or before thirty days from the date hereof that the records and proceedings aforesaid, being inspected, the Circuit Court of Appeals may cause further to

be done therein to correct those errors that of right and according to the laws and customs of the United States ought or should be done. [49]

WITNESS the Honorable CHARLES E. HUGHES, Chief Justice of the United States, and the seal of the District Court of Alaska, Division Number One, affixed at Juneau this 9th day of March 1931.

JOHN H. DUNN,
Clerk.
By J. W. Leivers,
Deputy.

Copy received and service admitted this 7th day of March, 1931.

H. L. FAULKNER,
Attorney for Defendant.

Filed Mar. 9, 1931. [50]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Peter Sekinoff, plaintiff and principal, and L. Kann and C. H. Helgesen, of Juneau, Alaska, as sureties, are held and firmly bound unto the defendant, N. P. Severin Company, in the penal sum of \$100, for which payment, well and truly to be paid, we bind ourselves and each of us, and our heirs, executors, administrators, and successors, jointly and severally firmly by these presents.

The condition of the above obligation is such that whereas the above-named principal is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse a judgment in the above-entitled court, rendered and entered in the District Court for the District of Alaska at Juneau, Alaska, on March 7th, 1931.

NOW THEREFORE, if the said plaintiff shall prosecute said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

Signed and sealed this 7th day of March, 1931, at Juneau, Alaska.

PETE SEKINOFF,

Principal. [51]

L. KANN,

C. H. HELGESEN,

Sureties.

Taken and acknowledged before me this 7th day of March, 1931.

[Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My comm. expires 1/22/34.

Filed Mar. 9, 1931. [52]

United States of America,
Territory of Alaska,—ss.

We, the undersigned, L. Kann and C. H. Helgesen, whose names are signed to the foregoing bond, being first duly sworn, depose and say: That we are residents of Juneau, Alaska, and not counselors

at law, nor attorneys, marshals, deputy marshals, Clerks of any court, nor other officers of any court, and are qualified to give bail; and that together we are worth the sum of \$200.00 over and above all just debts and liabilities, exclusive of property exempt from execution.

L. KANN,
C. H. HELGESEN.

Subscribed and sworn to before me this 7th day of March 1931.

[Seal] SIMON HELLENTHAL,
Notary Public for Alaska.

My comm. expires 1/22/34.

Approved this 9th day of March, 1931.

JUSTIN W. HARDING,
District Judge.

Copy received March 7th, 1931.

_____,
Attorney for Defendant.

Filed Mar. 9, 1931. [53]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America.

The President of the United States of America, to
the Defendant N. P. Severin Company:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Ap-

peals for the Ninth Circuit, to be holden in the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the District Court for the District of Alaska, Division Number One, at Juneau, wherein Peter Sekinoff is plaintiff and appellant and N. P. Severin Company is defendant and appellee, then and there to show cause, if any there be, why said judgment in said cause, and in said appeal mentioned, should not be corrected and speedy justice done in that behalf.

WITNESS the Honorable CHARLES E. HUGHES, Chief Justice of the United States this 9th day of March, 1931.

JUSTIN W. HARDING,
District Judge.

Attest: JOHN H. DUNN,
Clerk.

By J. W. Leivers,
Deputy.

Service of the foregoing admitted this 7th day of March, 1931.

H. L. FAULKNER,
Attorney for Defendant.

Filed Mar. 9, 1931. [54]

Filed Mar. 9, 1931.

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Will you please make up a transcript of the record in the above-entitled cause, and include therein the following papers, to wit:

1. Complaint.
2. Answer.
3. Duplicate original bill of exceptions, called statement of facts.
4. Judgment.
5. Assignment of error.
6. Petition for appeal and order allowing appeal.
7. Appeal.
8. Cost bond on appeal.
9. Citation.
10. This praecipe.
Clerk's certificate.

—said transcript to be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and please forward the same to the Clerk of the said Circuit Court of Appeals for the Ninth Circuit, in accordance with said rules.

Dated at Juneau, Alaska, this 7th day of March, 1931.

HELLENTHAL & HELLENTHAL,
Attorneys for Plaintiff.

Copy received Mch. 7, 1931.

H. L. FAULKNER,
Attorney for Plaintiff. [55]

[Title of Court.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Alaska,
Division No. 1,—ss.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached fifty-six pages of typewritten matter, numbered from 1 to 56, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorneys for appellant on file in my office and made a part hereof in cause No. 3064-A, wherein Peter Sekinoff is plaintiff and appellant and the N. P. Severin Company is defendant and appellee.

I further certify that the said record is in accordance with an appeal, citation issued and praecipe in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to the sum of Nineteen and 55/100 Dollars (\$19.55) has been paid by counsel for the appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 11th day of April, 1931.

[Seal]

JOHN H. DUNN,
Clerk.

By J. W. Leivers,
Deputy. [56]

[Endorsed]: No. 6439. United States Circuit Court of Appeals for the Ninth Circuit. Peter Sekinoff, Appellant, vs. N. P. Severin Company, a Partnership of Which N. P. Severin and A. N. Severin are Members, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Division Number One.

Filed April 18, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

